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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 104

UNITED STATES OF AMERICA, PETITIONER

vs.

RICHARD ISAAC MENASCHE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MAY 28, 1954
CERTIORARI GRANTED OCTOBER 14, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

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UNITED STATES OF AMERICA, PETITIONER

vs.

RICHARD ISAAC MENASCHE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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1 In the United States District Court for the District of Puerto Rico

Re: Petition for Naturalization of Richard Isaac Menasche.
Petition No. 5308.

Docket entries

1953

April 24 Petition filed.
Aug. 17 Hearing had, petition submitted.
Aug. 17 Exhibit I for Immigration Service filed. (Findings of Fact, Conclusions of Law and Recommendation of the Designated Naturalization Examiner.)
Aug. 17 Exhibit A for petitioner filed. (Declaration of Intention.)
Sept. 21 Opinion, Findings of Fact & Conclusions of Law and Judgment filed. 1 simple copy of each issued to Immigration & Naturalization Service, Miami, Fla.; Immigration & Naturalization Service, San Juan, P. R. and to Tomas I. Nido, Esq.
Oct. 20 Notice of Appeal filed.

Attest: A True Copy:

MARY AGUAYO,
Clerk, U. S. Dist. Court.
By SARA TEJEDOR,
Deputy.

2 In United States District Court

No. 5308

Petition for naturalization

Filed April 24, 1953

(Under General Provisions of the Immigration and Nationality Act)

To the Honorable the District Court of United States for P. R. at San Juan, P. R.

This petition for naturalization, hereby made and filed, respectfully shows:

(1) My full, true, and correct name is Richard Isaac Menasche. (2) My present place of residence is 51 Calle Los Tanques, Santurce, P. R. (3) My occupation is Manager, Commin Electrics of P. R. Inc. (4) I am 40 years old. (5) I was born on September 19, 1912, in Antwerp, Belgium. (6) My personal de-

scription is as follows: Sex Male, complexion Fair, color of eyes Brown, color of hair Black, height 5 feet 6 inches, weight 175 pounds, visible distinctive marks none; country of which I am a citizen subject, or national France. (7) I am married; the name of my wife is FRIEDA MENASCHE, we were married on September 21, 1945, at Cairo, Egypt, she was born at Seret, Roumania, on December 28, 1915 and entered the United States at New York, N. Y., on March 7, 1950 for permanent residence in the United States and now resides with me and was naturalized on at certificate No. ; or became a citizen by . (8) I have no children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows: . (9) My lawful admission for permanent
3 residence in the United States was at New York, New York under the name of Richard Isaac Menasche on March 7, 1948 on the Plane NC 90927. (10) Since my lawful admission for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, except as follows:

DEPARTED FROM THE UNITED STATES

Port	*Date (Month, day, year)*	*Vessel or Other Means of Conveyance*
New York, N. Y	4/22/1948	By plane.
New York, N. Y	3/27/1949	By plane.
New York, N. Y	3/19/1950	By plane.
New York, N. Y	3/19/1951	By plane.

RETURNED TO THE UNITED STATES

Port	*Date (Month, day, year)*	*Vessel or Other Means of Conveyance*
New York, N. Y	3/5/1949	By plane.
New York, N. Y	3/7/1950	By plane.
New York, N. Y	3/5/1951	By plane.
New York, N. Y	2/24/1952	SS. Queen Mary.

(11) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen. (12) It is my intention to reside permanently in the United States. (13) I am not and have not been for a period of at least 10 years immediately preceding the date of this petition a member of or affiliated with any organization proscribed by the Immigration and Nationality Act or any section, subsidiary, branch affiliate or subdivision thereof nor have I during such period engaged in or performed any of the acts or activities prohibited by that act. (14) I am able to read, write and speak the English language (unless exempted therefrom). (15) I am, and have been
4 during all the periods required by law, a person of good

moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. I am willing, if required by law, to bear arms on behalf of the United States, or to perform noncombatant service in the Armed Forces of the United States, or to perform work of national importance under civilian direction (unless exempted therefrom). (16) I have resided continuously in the United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since March 7, 1948 and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition, to wit, since March 24, 1952; and during the past 5 years I have not been physically present in the United States for at least one-half of that period. (17) I have not heretofore made petition for naturalization: No. on at in the Court, and such petition was denied by that Court for the following reasons, to wit: . (18) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses required by law. (19) Wherefore I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to RICHARD MENASCHE. I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full true name; SO HELP ME GOD.

Alien Registration No. 6 862 935

(S) RICHARD ISAAC MENASCHE.

3. *Affidavit of witness*

The following witnesses, each being severally, duly, and respectfully sworn, depose and say:

(1) My name is Charles J. Powell, my occupation is Capt. U. S. Army. I reside at HHA 117, Fort Buchanan, Puerto Rico and (2) My name is Frank J. Planas, my occupation is Manager. I reside at 119 Rodrigo Triata St., Hato Rey, Puerto Rico.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with the petitioner named in the petition for naturalization of which this affidavit is a part, since at least 4-24-52 and 5-24-52 respectively; to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned; that the petitioner has been physically present in the United States for at least 12 & 13 months respectively of that period; and that he has re-

sided at San Juan in the State of Puerto Rico continuously since at least 4-24-52 and 3-24-52 respectively I have personal knowledge that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in the affidavit to this petition for naturalization subscribed by me are true to the best of my knowledge and belief. So help me God.

(S) CHARLES J. POWELL
(Signature of Witness)
(S) FRANK J. PLANAS
(Signature of Witness)

6 WHEN OATH ADMINISTERED BY CLERK OR DEPUTY CLERK OF COURT

Subscribed and sworn to before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of clerk of the said court at San Juan, Puerto Rico, this 24th day of April A. D. 1953.

MARY AGUAYO,
Clerk.
By (S) SARA S. PONS,
Deputy Clerk.

WHEN OATH ADMINISTERED BY DESIGNATED EXAMINER

Subscribed and sworn to before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit at this day of A. D. 19 .

Designated Examiner.

I hereby certify that the foregoing petition for naturalization was by petitioner named herein filed in the office of the clerk of said court at this day of A. D. 19 .

Clerk.

[SEAL]

Deputy Clerk.

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore

been a subject or citizen; that I will support and defend
7 the Constitution and the laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; or that I will perform noncombatant service in the Armed Forces of the United States when required by the law; or that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

_____
(Signature of Petitioner)

Sworn to in open court, this day of A. D. 19 .

_____
Clerk.

By _____
Deputy Clerk.

NOTE.—In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) which I have heretofore held," or "I further renounce the order of nobility (give the order of nobility) in which I have heretofore belonged."

Petition granted: Line No. of List No. and Certificate No. issued.

Petition denied: List No. .

INTERROGATORIES IN DEPOSITIONS OF WITNESSES

STATE OF NEW YORK,
County of N. Y., ss:

MR. HERMAN J. GOLDEN being first duly sworn by me, deposed, testified, and said as follows:

8 1. Q. State your name, age, occupation, and address.—A. Name Herman J. Golden, age 21, occupation Exec. Columbia Pictures, address 8 Firethorne Lane, Valley Stream, L. I., N. Y.

2. Q. Where were you born? A. Brooklyn, N. Y.

3. Q. Are you a citizen of the United States? A. Yes.

4. Q. If you are a naturalized citizen, state when, where, and in what court you were naturalized and the number of your certificate. A. .

5. Q. If you claim citizenship through another person, explain fully, giving essential dates and relationship.—A. .

6. Q. Are you acquainted with the petitioner for naturalization Richard Isaac Menasche?—A. Yes.

7. Q. State when and where you first met the petitioner and how you came to meet him/her.—A. Shortly after he entered the U. S. on 3/7/48 for permanent residence, I met him in the office of Columbia Pictures of which I am an executive and he is sales exec. of our Belgium Subsidiary Company.

8. Q. Have you personally known him/her to be a resident of the United States?—A. Yes.

9. Q. State at what places in the United States you have known him/her to reside, and between what dates you knew him/her to reside at each place.—A. New York, N. Y., from Mar. 17, 1948, to Mar. 24, 1952. Moved to Puerto Rico.

10. Q. During his/her residence in such places, how long was he/she physically present there?—A. From 3/7/48 to 4/22/48; 3/5-27/49; 3/7-19/50; 3/5-19/51; and from 2/24/52 to 3/24/52.

11. Q. When did (s)he remove from N. Y., State of N. Y.? (This question refers to the city or town and State mentioned in the deposition notice.)—A. On 3/24/52 moved to Puerto Rico.

12. Q. Where did you reside during the time the petitioner lived in the city or town and State mentioned in question 11?—A. Brooklyn, N. Y., and Valley Stream, L. I., N. Y.

13. Q. How often did you see the petitioner while (s)he resided in the State mentioned in question 11?—A. Almost daily when he was physically present in N. Y.

14. Q. Since you first met him/her in the United States has (s)he ever been absent from the United States? (If so, give dates and facts.)—A. 4/22/48 to 3/5/49; 3/27/49 to 3/7/50; 3/19/50 to 3/5/51; and 3/19/51 to 2/24/52 in Belgium as our Belgium Subsidiary top man.

15. Q. Has the petitioner ever to your knowledge been arrested or charged with, or convicted of, a crime or a violation of law? (Give facts.)—A. No.

16. Q. Has the petitioner to your knowledge, behaved as a person of good moral character during all the time you have known him/her as a resident of the United States?—A. Yes.

17. Q. Has the petitioner ever been an anarchist, a believer in anarchy, or a member of or affiliated with any subversive organization, or with any body of persons teaching disbelief in or opposition to organized government?—A. No.

18. Q. Do you believe from your personal knowledge of the petitioner that during all the time you have known him/her as a resident of the United States (s)he has been attached to the principles of the Constitution of the United States and well

disposed to the good order and happiness of the United States?—A. Yes.

19. Q. Do you know of anything that might in your opinion disqualify the petitioner for citizenship?—A. No.

20. Q. Do you recommend the petitioner for citizenship?—A. Yes.

(S) HERMAN J. GOLDEN.

Subscribed and sworn to before me at N. Y., N. Y., this day of July 6, 1955. I Hereby Certify that the above-named witness established to my satisfaction that (s)he is a citizen of the United States and that his/her statements relate to the petitioner concerned.

(S) NINA H. IKAED.
U. S. Naturalization Examiner.

STATE OF NEW YORK,
County of N. Y., ss:

MR. BERNARD E. ZEEMAN being first duly sworn by me, deposed, testified, and said as follows:

1. Q. State your name, age, occupation, and address.—A. Name Bernard E. Zeeman, age 214, occupation Treas. Columbia Pictures Int-Company, address 181 Jones Rd., Englewood, N. J.

2. Q. Where were you born?—A. New York, N. Y.

3. Q. Are you a citizen of the United States?—A. Yes.

4. Q. If you are a naturalized citizen, state when, where, and in what court you were naturalized and the number of your certificate?—A.

5. Q. If you claim citizenship through another person, explain fully, giving essential dates and relationship.—A.

6. Q. Are you acquainted with the petitioner for naturalization Richard Isaac Menasche?—A. Yes.

7. Q. State when and where you first met the petitioner and how you came to meet him/her.—A. In Mar. 1948 when he came to U. S. for permanent residence as manager of our subsidiary Co., in Belgium.

8. Q. Have you personally known him/her to be a resident of the United States?—A. Yes.

9. Q. State at what places in the United States you have known him/her to reside, and between what dates you knew him/her to reside at each place.—A. New York, N. Y., from Mar. 7 1948, to Mar. 24 1952. Moved to Puerto Rico.

10. Q. During his/her residence in such places, how long was he/she physically present there?—A. From 3-7 to 4-22-1948; 3-5-27-49; 3-2-49-50; 3-5-49-51; and 2-24 to 3-24-52.

11. Q. When did (s)he remove from N. Y., State of N. Y.? (This question refers to the city or town and State mentioned in the deposition notice.)—A. Mar. 24 1952 he moved to Puerto Rico.

12. Q. Where did you reside during the time the petitioner lived in the city or town and State mentioned in question 11?—A. Englewood, New Jersey.

13. Q. How often did you see the petitioner while (s)he resided in the State mentioned in question 11?—A. During periods he was physically present in N. Y. I saw him almost constantly.

14. Q. Since you first met him/her in the United States has (s)he ever been absent from the United States? (If so, give dates and facts.)—A. 4/22/48 to 3/5/49, 3/27/49 to 3/7/50; 3/19/50 to 3/5/51; 3/19/51 to 2/24/52 in Belgium as Mgr. of our subsidiary Co. there.

15. Q. Has the petitioner ever to your knowledge been arrested or charged with, or convicted of, a crime or a violation of law? (Give facts.)—A. No.

16. Q. Has the petitioner to your knowledge, behaved as a person of good moral character during all the time you have known him/her as a resident of the United States?—A. Yes.

12 17. Q. Has the petitioner ever been an anarchist, a believer in anarchy, or a member of or affiliated with any subversive organization, or with any body of persons teaching disbelief in or opposition to organized government?—A. No.

18. Q. Do you believe from your personal knowledge of the petitioner that during all the time you have known him/her as a resident of the United States (s)he has been attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States?—A. Yes.

19. Q. Do you know of anything that might in your opinion disqualify the petitioner for citizenship?—A. No.

20. Q. Do you recommend the petitioner for citizenship?—A. Yes.

(S) BERNARD E. ZELMAN.

Subscribed and sworn to before me at New York, N. Y., this day of July 6, 1953. I hereby certify that the above-named witness established to my satisfaction that (s)he is a citizen of the United States and that his/her statements relate to the petitioner concerned.

(S) NINA H. IKARD.
U. S. Naturalization Examiner.

13 In United States District Court

Transcript of hearing

(Filed by leave of court January 11, 1954)

Be it remembered that this matter came on to be heard upon the Petition for Naturalization of Richard Isaac Menasche, No. 5308, on the 17th day of August 1953, before the Honorable Clemente Ruiz Nazario, United States District Judge, sitting at San Juan, Puerto Rico.

Appearances: For the United States, Eugene E. Cole, Esq., for the U. S. Immigration and Naturalization Service, and Ruben Rodriguez Antongiorgi, Esq., Assistant United States Attorney.

For the Petitioner: Tomas I. Nido, Esq.

Whereupon, the hearing of the petition was commenced, and testimony produced and proceedings had as follows, to wit:

Colloquy between Court and counsel

Mr. Cole. May I proceed, your Honor?

The Court. Yes.

Mr. Cole. In this case as in the other cases that we have had this morning preliminary examination was conducted by an examiner designated by the Immigration and Naturalization Service, and at such examination testimony was taken and evidence accepted into the record. The examiner has prepared a memorandum of findings of fact and conclusions of law, and recommendations which was supposed to be made and which is made at this time in this case. I therefore present the examiner's memorandum, with the exhibits mentioned therein. Those exhibits are No. 1 through No. 3. I request that they be accepted into evidence.

The Court. There has been only one recommendation in this case.

Mr. Cole. This is the first time this has been in court at all, your Honor.

14 Mr. Nido. Your Honor, in connection with this document, we certainly have no objection to the facts being admitted, as such. In other words, that portion of the Findings of Facts and Conclusions of Law and recommendations which are merely confined to statements of fact, we admit. As to the legal conclusions which flow from those facts, we do not admit.

The Court. That is for the Court. It is admitted and marked Exhibit No. 1 for the Government.

(The documents were then admitted in Evidence and marked Exhibit No. 1 for the Government.)

Mr. Cole. I believe then, your Honor, we are in agreement, Mr. Nido and I, that the facts are agreed upon and that the only question is a question of law.

The Court. As the Court understands this case, the position of the Immigration Authorities is to the effect that if this petition had been filed and the proceedings thereunder had been admitted under the Nationality Act of 1950, this petitioner would be entitled to citizenship; that the only question is the question as to the Savings Clause in the Nationality Act of 1952.

Mr. Cole. To my mind, your Honor, that is the only question. They seek to invoke the provisions of law before the new act came into effect, and particularly by reason of the Savings Clause.

The Court. There is no doubt that he could have been admitted as a citizen under the 1950 Act?

Mr. Cole. Yes, your Honor. We might have mentioned the absence of more than six months.

Mr. Nido. I believe what your Honor is driving at is whether the Immigration and Naturalization Service accepts that insofar as the requirements for naturalization under the old law, had the new law been in effect that Mr. Menasche has complied, or would have complied with all the requirements of a material character, such as residence, and so forth, and did not abandon his position by reason of repeated trips; in other words, if the new law is applicable to this petition, then because he was not physically present in the United States for one-half of the residential five year period required, the petition should be denied.

Mr. Cole. Yes. In other words, if it had come under the old law we would not have recommended denial, but we would have called attention to it. We would have recommended favorably.

The Court. So if it had not been for the Act of 1952, the recommendation would have been favorable?

Mr. Cole. That's right.

Mr. Nido. We would like to have the record show, your Honor, that the declaration of intention of the petitioner in this case was actually filed on April 16, 1948. There is a reference to such declaration of intention on page 2 of the Findings of Fact, but it merely says that he in fact prayed for and was issued a declaration of intention shortly after original entry, in order to avoid actual declaration. I am asking Mr. Cole to stipulate with me for the record that that declaration was actually issued on April 16, 1948.

Mr. Cole. It is agreeable to me.

The Court. Are you going to offer that in evidence?

Mr. Nido. I am going to stipulate for the record.

The Court. It is better to have the declaration of intention in evidence.

Mr. Nuss. All right. I will offer it then. We can always withdraw it.

The Court. That is admitted as Exhibit A for the Petitioner (The Document in Question was then admitted in Evidence as Petitioner's Exhibit "A.")

Mr. Nuss. Your Honor, in this case, as Mr. Cole has already stated, the basic facts are not in dispute. The only issue is whether the petitioner is entitled to naturalization at this time as of the date of the filing of the petition, by virtue of the fact that on the basis of the law there in effect he had not been resided physically in the United States for two and a half years. We must accept the facts to be as stated. Mr. Menasche on April 16th, or rather on April 24th when his petition was filed, had not yet been physically present two and a half years. On the other hand, we contend that the Immigration Act of 1952, by virtue of the Savings Clause, was intended and should be interpreted as having been intended to cover just such a case as Mr. Menasche's. While we are inclined to agree that mere hardship is not the basis for ignoring the mandatory provisions of Congress, we believe that Section 316 (a) in part (for the mandatory provision of Section 316 (a), which is the basis for recommending denial. In view of the fact that this Court will have to interpret the scope and effect of Sections 4 and 5 (a), it would at least be pertinent; but I believe we would like to have the record show that the hardship which would be imposed upon the petitioner, if this petition were to be denied, is so great as to possibly influence the Court in concluding that by the approval of Section 4 and 5 (a) Congress had in mind cases like this.

I would like to put Mr. Menasche on the stand to bring out more specifically the hardship as a result of recommending denial. Mr. Menasche is in Court and I will question him on that, if your Honor please.

The Court. Do you intend to file brief?

Mr. Nuss. Yes, your Honor, a short one.

The Court. I will give you five days for brief.

The Court. Is there going to be any testimony?

Mr. Nuss. Yes, very short.

The Court. All right.

RICHARD ISAAC MENASCHE, the Petitioner, upon called as a witness in his own behalf, was sworn and was examined, and testified as follows:

Direct examination by Mr. Nuss:

Q. What is your full name? A. Richard Isaac Menasche.

Q. Are you the petitioner in this case?—A. Yes.

Q. Of what country are you presently a citizen?—A. France.

Q. By birth or by naturalization?—A. Naturalization.

Q. What business are you in?—A. Executive of an American motion picture company.

Q. How long have you been engaged in that particular field, Mr. Munasche?—A. I have been in this field for the past 24 years, and manager in various countries for Columbia Pictures for the past fifteen years.

Q. Throughout that period of 24 years, where have you served in that capacity?—A. In the 15 years in my assignment with Columbia Pictures, or before?

Q. With Columbia pictures.—A. I was sent as supervisor for the Middle East for about nine years. However, I left my assignment for one year to join the French Forces during the war. However, the company kept the assignment open for me.

Q. How old are you?—A. Forty-seven.

Q. For the last 24 years you have been solely engaged in the motion picture industry?—A. That's right. I started at the very bottom of the industry, and joined Columbia Pictures in 1949, and the assignment has been so pleasant in the way I have been treated and handled, it has moved me so much that that is one of the main reasons why I began to get a strong feeling for the Americans and wanted to be one of them.

Q. According to the record, you first came to the United States under permanent resident visa sometime in March 1948. Now will you please state for the record precisely the facts surrounding that permanent visa and entry into the United States?—A. Well, I have a letter here from the Vice President of my company, whom I had written to in March, 1947, from Cairo, advising me that I had taken a very wise step, which was to apply for an immigration visa in Cairo and intended to become an American citizen.

Q. I take it that as early as March, 1947, you had taken that decision?—A. Yes, that is right. It was on my mind even during the war. However, I was waiting that conditions would permit me to get the company's authorization to come to the States.

Q. Why was it that although you got your visa in March 1947, you didn't come to the United States until 1948?—A. The reason is that the company at that time * * * I have a letter here pointing out that my desire to become an American citizen is very commendable * * *

Q. Please be brief.—A. Because my company at that time wanted to transfer me from Egypt to Belgium where they needed my services, where they wanted me to assume the management.

Q. It was for business reasons?—A. Business reasons, that's right.

Q. When you were finally authorized to come to the States in March, 1948, did you or did the company pay your expenses?—A. No, I had quite a hard time to get the company to approve my trip

to the States. As a matter of fact I even had reservations at one time and they cancelled them, and they thought I should get [illegible] an extension. They needed my services abroad. So finally, when I had such a hard time, and for one American citizenship meant so much to me, I advised that if the trip was not approved at my expense, I would resign.

Q. Was it then approved? A. It was approved provided all expenses were for my account, and I arrived in the United States on March 7, 1948 so as to establish permanent residence.

Q. You came at your own expense? A. Yes, and all trips I made at my expense.

Q. You were never reimbursed?—A. No.

Q. From the date of your entry in March, 1948, until the date on which you filed application for naturalization I do not want you to state anything now because that is in the report and we have stipulated as to the facts. You of course paid Federal income tax during the five years? A. Oh, yes. I pay income tax in the United States due to the fact that I came to establish residence for naturalization. It was obvious that I should also be a resident for income tax purposes, and I pay taxes in the States and even paid in the States on what I had paid in Belgium that didn't mean much, however—because I wanted one day to become an American citizen, which would make me very, very happy.

Q. From the record it appears that on December 24, 1952 when the new immigration act of 1952 went into effect, you had qualified for residence under the old law for four years, nine months and 16 or 18 days? A. Yes. I think, Mr. Nido, maybe you intend not mentioning it, but I would like to mention to the Court that under the previous law it was understood that if I had had absences of less than a year, and had maintained physical presence of one year in the United States, it was left up to the Court, provided my background and morals and so forth [illegible] were good, so Columbia Pictures has been very cooperative with me and they worked it out to send me for one year, from Belgium, which is a territory businesswise much more important than here, however they sent me here in a spirit of cooperation and also to help me out, and also considering that my services were satisfactory.

Q. Just how does the importance of the field in Belgium where you were manager compare with the Puerto Rican field? A. Well, the Puerto Rican field is usually a training ground, after which managership we are sent to Trinidad or to places in Latin America. Belgium has 2,000 cinemas, and Puerto Rico has 200.

Q. Are they paying you the same salary?—A. Yes. They didn't want to change my conditions because they figured I might

find myself another job. They didn't want to dishearten me, but wanted to be fair to me.

Q. If this petition were to be denied, Mr. Menasche, what would be the minimum consequences of your status?—A. Mr. Nido, I will answer to that or first I must add one thing, that for a number of years my company intends to use me in the foreign field, because they think I have more value to them because I know several foreign languages and foreign markets, and actually there is a very important position in our company where a man has retired, and which they have kept open for me for several months waiting for the Court decision on my citizenship, and if I get it I will get the assignment. The president told me recently that if the petition was denied it was up to me to make the choice, but he could not keep the job open any longer. I told him that American citizenship was the most important thing to me. But I am 47, and I cannot play around. There are certain things I can do, and others I cannot. I have acquired a reputation, and they have helped me out by sending me to Puerto
21 Rico. I have acquired four years and ten months under the old law. Now there is a new law, and if I have to be penalized * * *.

Mr. Nido. Don't be argumentative. Just state the facts. That's all, your Honor.

Cross examination by Mr. Cole:

X Q. Mr. Menasche, after you came to the United States in 1948 and before you departed * * *. I believe it was April 22nd of that year?—A. Yes.

X Q. Did you make application then or later to be exempt from residence in the United States?—A. I never made application to be exempt from residence in the United States for the simple reason that it was mentioned to me that absence of less than a year, more than six months but less than a year, may or may not break the required residence provided the petitioner can prove that he didn't intend to abandon residence, and I never intended to do so due to the fact that I paid income tax.

X Q. Did you make application later?—A. Oh, yes. Excuse me, I did make application for 307 B. I am sorry. And it was said to me that I had not acquired one year's physical residence at the time. That is why we worked it out with the company to do one year's residence.

X Q. In other words, you did not qualify under Section 307?—A. No. In 1949 or 1950 the company did apply for 307 B, which is a special permit approved by the Attorney General to reside abroad for more than a year without breaking the residence requirement.

X Q. If you had been granted the benefit of that section you would have remained abroad for more than a year?—A. That depends on the service or the requirements of my company. Requirements change very quickly. I was in Egypt and suddenly got a cable to go to Belgium.

X Q. Did you not say that you made a particular effort to come back before the expiration of the year?—A. That's right.

X Q. If you had been permitted to stay more than a year would the chances have been that you would have remained more than one year?—A. Yes, certainly. The purpose of the permit being applied for was precisely to stay out more than one year. It would have been easier for me, and I will tell you frankly because it is a question of economy. Trips to the States are very costly.

X Q. You were denied that?—A. Yes, because I didn't have one year's physical residence.

Mr. Cox. That's all.

(Witness excused.)

Colloquy between Court and counsel

Mr. Nino. I repeat to the court, I would like five days, not including today, to file a memorandum.

The Court. You will serve a copy on counsel?

Mr. Nino. Yes, I will.

The Court. And he will also have five days. I will take the matter under advisement. I want you to discuss in those memoranda this case. The Court is very much concerned about the Savings Clause. It says "Nothing contained in this Act, unless otherwise specifically provided thereon, shall be construed to affect the validity of any declaration of intention." This declaration of intention was made in 1948, and it would have entitled this petitioner under the former Nationality Act, provided he complied with all the other terms of the Act, to become a citizen after five years. That is, not less than two nor more than seven. That being the case, how can this petitioner be denied the status contemplated by that Saving Clause? Otherwise that mention of declaration of intention would be meaningless in the Saving Clause. There is another provision in regard to warrant of arrest, warrant of exclusion or other document or proceeding which shall be valid at the time this action took effect." This was valid and the proceedings initiated under this declaration of intention were valid when the act took effect. The Court doubts very much that that Saving Clause does not apply to this petition, and I must be frank to state it to this Immigration representative here. Otherwise, it doesn't mean anything. If we say that citizenship is a right or privilege and try to impress

that in the Saving Clause, then the Saving Clause would mean nothing and would have been put there for no purpose. Congress must have had a sound purpose in putting in that Saving Clause.

Mr. Cole. Your Honor, as to these three petitions this morning, I believe it is in order for me to present to the Court the recommendations of the Examiner and on the basis of these the Court will make the decision. I can make the Court order, if the court desires to enter an order on this separately or all together.

The Court. Well, after the Court arrives at a conclusion the Court will ask either the Department or the petitioner to prepare a form of order to be signed. If the Court is going to order the recommendation of the Immigration Service be approved and that the petition be denied, I will sign that form of order.

Mr. Cole. Very well. Then it will be in order for you to get the recommendation.

The Court. You may file that with your memorandum, or you may leave that with the Clerk.

The Court will adjourn until this afternoon.

(End of the Hearing.)

Certified to be a True and Correct Transcript.

(S) A. J. Perrone,
A. J. Perrone,
Official Court Reporter.

24 In United States District Court

Exhibit I Immigration Service

(Filed August 17, 1953)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE DESIGNATED NATURALIZATION EXAMINER

To the Honorable, the Judge of the United States District Court for the District of Puerto Rico at San Juan:

1. The undersigned, duly designated under the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization, respectfully reports that the above named petitioner, a native of Belgium and subject of France, 46 years of age, who lawfully entered the United States for permanent residence on March 7, 1948, filed a petition for naturalization under the general provisions of the Immigration and Nationality Act on April 24, 1953.

The questions presented are:

(1) Whether the petitioner has established continuous residence in the United States for the period required by law, that is since April 24, 1948; and

(2) Whether the petitioner has established physical presence in the United States for the period required by law.

2. The petitioner and his verifying witnesses were accorded a preliminary examination on April 24, 1953, the date the petition was filed, at which time sworn statement (Exhibit III) was obtained. The petitioner alleged in his petition and at the preliminary examination that following his lawful entry into the United States for permanent residence on March 7, 1948, he was absent from the United States for more than six months as follows:

April 22, 1948 to March 5, 1949
March 27, 1949 to March 7, 1950
March 19, 1950 to March 5, 1951
March 19, 1951 to February 24, 1952

25 He also stated that he had been absent from the United States for periods of less than six months as follows:

June 17, 1952 to June 24, 1952
January 5, 1953 to January 7, 1953

The petitioner alleged in his preliminary application to file petition for naturalization (Exhibit I) that since 1939 he had been employed by Columbia Pictures International, an American business corporation, and that his absences abroad were occasioned or necessary in connection with his employment by that corporation which was at all times engaged in the promotion of foreign trade and commerce of the United States; that he was absent from the United States at no time for one year or more and that on each occasion he was properly readmitted to the United States on the basis of a re-entry permit issued by the Immigration and Naturalization Service. At the request of the petitioner, there was entered into the record at the preliminary examination an affidavit (Exhibit II) of an official of the Columbia Pictures International Corporation testifying to petitioner's employment in that organization since 1939, and that he was employed or performed his duties abroad in the interests of that corporation, distributing throughout the world the motion pictures produced by it in the United States; also, that the organization by which petitioner was employed arranged his services outside the United States so as to permit him to return to this country so as to retain residence for naturalization purposes. As a summary, petitioner acknowledged that during the 5 year period immediately preceding the date of his petition, he had been absent from the United States a total of forty-four months and had been physically present in the United States a total of sixteen months.

26 3. The provisions of the Immigration and Nationality Act as to the requirements of residence and physical presence in the United States are to be found in Section 316 (a) which reads in part as follows:

> SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time. * * *.

That part of the Act relating to absences from the United States is to be found in sub-paragraph (b) of Section 316 which reads:

> (b) Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence, unless the petitioner shall establish to the satisfaction of the court that he did not in fact abandon his residence in the United States during such period.

During the period for which petitioner is required to establish continuous residence, he was absent on four occasions for periods in excess of six months but less than one year. He has testified and the evidence establishes that during such periods he was abroad in the employ of an American corporation or subsidiary thereof, and in connection with such employment was engaged in the
27 development of the foreign trade and commerce of the United States. Petitioner claimed that he had no intent of abandoning his residence in the United States, that he in fact applied for and was issued a declaration of intention shortly after his original entry, that in connection with each absence he applied for and obtained a permit with which to re-enter the United States, that he made special and particular effort to return to the United States prior to the expiration of one year, and that during all of his absences he continued to pay income tax in this country. It is therefore believed that the petitioner will be able to establish to the satisfaction of the Court that he did not in fact abandon his residence in the United States during the time that he was absent from this country for more than six months.

As to the provisions of Section 316 (a) quoted above regarding the physical presence requirement, it is evident that if this provision of law is to be construed as read without exception that the petitioner was not physically present within the United States for at least one-half of the 5-year period immediately preceding the date of his petition. In this connection the petitioner

first contends that under an equitable interpretation of Section 405 (a) of the Immigration and Nationality Act, the Savings clause, that his right should be determined under the law which was in effect at the time he acquired a permanent resident status in the United States. The Saving Clause referred to by petitioner provides in part:

> SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or part of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

Section 316 (a) of the Immigration and Nationality Act does not "specifically provide otherwise" and it would therefore follow that the Savings Clause contained in Section 405 (a) would apply if there was a cause stated within the clause. While not so specifically stated, it is believed that the petitioner seeks the benefit of this Savings Clause which reads that nothing contained in the Act shall be construed to affect the validity of "any status, condition, right in process of acquisition, done or existing, at the time this Act" took effect. Certainly it cannot be concluded that subject had any status or right in process of acquisition which would have been in existence as entitling him to be a citizen at the time of the passage of the Immigration and Nationality Act. He had the right of a person lawfully admitted for permanent residence with the hope of being able to acquire the qualifications necessary for naturalization. He had no "right" to citizenship, as citizenship is to be construed as a privilege and not a right. Moreover, had Congress intended to allow an exemption from the physical presence requirement in such class of cases, it would have so provided by statute. To the contrary in dealing with the classes who might be permitted to remain outside the United States for more than one year without breaking the continuity of residence, as provided in Section 316

(b) of the Immigration and Nationality Act, it was specifically provided in sub-paragraph (c) of that Section:

> (c) The granting of the benefits of subsection (b) of this Section shall not relieve the petitioner from the requirement of physical presence within the United States for the period "specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. * * *

Provisions were also contained in Section 307 (b) of the Nationality Act of 1950, which have been repealed and superseded by Section 316 (b) of the Immigration and Nationality Act, whereby an individual meeting certain requirements and upon proper application could have been exempt from the residence requirements and permitted to remain abroad in excess of one year. If such benefits had been granted it is possible that the recipient thereof could be considered to have a "right in process of acquisition" at the time the Immigration and Nationality Act became effective, as provided in the Savings Clause, Section 405 (a). However, such superseded law requires among other things that the applicant for the benefits thereof reside in the United States for a period of at least one year before being eligible to make application. It is evident that the petitioner in the instant case could not have acquired such year's residence inasmuch as he was not admitted to the United States for residence until March 7, 1948, and thereafter was absent almost continuously from April 1947 until February 1952. It is apparent that petitioner intended to comply with the requirements of the law for naturalization purposes and if the law had not been changed that he possibly would be eligible for naturalization at this time. It is manifest that the change of legislation visits a hardship upon the petitioner who had relied upon the previous Congressional pronouncement. That hardship alone would not justify departure from a Congressional mandate, formulated in the exercise of sovereign prerogatives, if a legislative purpose is clearly articulated. Harisiades v. Shaughnessy, 342 U. S. 580 (1952); Chinese Exclusion Case, 130 U. S. 581 (1889).

The petitioner's second and alternative contention is that if his eligibility to naturalization is not saved by Section 405 (a) of the Immigration and Nationality Act, that he should be accredited with the residence earned by him under the provisions of the old Nationality Act and that he should be required to comply with the provisions of the new Act only since the effective date of that Act, to wit, December 24, 1952. It is admitted that he could comply with the physical presence requirement in that he has resided physically in the United States for more than one-half of the time since that date. However, as stated beforehand, sub-

just had no vested status or right prior to the effective date of the Immigration and Nationality Act, and no provision was made to waive the physical presence requirement as to residence theretofore earned. Even though it would appear to visit a hardship in some cases, it is evident that such was known to and the intent of Congress.

It must therefore be concluded that the petitioner in the instant case has not complied with the physical presence requirement of Section 316 (a) of the Act.

4. Pursuant to the provisions of Section 335 of the Immigration and Nationality Act, I hereby make the following findings of fact and conclusions of law:

31 FINDINGS OF FACT

(a) That the petitioner is an alien and filed a petition for naturalization on April 24, 1953;

(b) That within the 5-year period immediately preceding the date of filing, the petitioner was absent from the United States on four occasions in excess of six months but less than one year;

(c) That the petitioner did not in fact abandon his residence in the United States during such periods of absence;

(d) That during the 5-year period immediately preceding the date of the petition, the petitioner was physically present in the United States for a total of 16 months and absent from the United States for a total of 44 months.

CONCLUSIONS OF LAW

(a) That the petitioner has established continuous residence in the United States for the period required by Section 316 (a) of the Immigration and Nationality Act;

(b) That the petitioner has failed to establish physical presence in the United States for the period required by Section 316 (a) of the Immigration and Nationality Act;

(c) That under Section 316 (a) of the Immigration and Nationality Act the petitioner may not be naturalized.

5. I recommend that this petition for naturalization be denied on the ground that the petitioner has failed to establish physical presence in the United States for the period required by law.

Respectfully submitted,

(S) DAVID L. STOLLS,
Designated Naturalization Examiner.

Date:

32 *Exhibit No. 1 to Exhibit 1*

Form N-400
United States Department of Justice
Immigration and Naturalization Service
(Rev. 12-24-52)

Form approved.
Budget Bureau No. 42-R079.6.

ALIEN REGISTRATION

RICHARD ISAAC MENASCHE

No. 6862935

Mail or take to:
Immigration and Naturalization Service,
P. O. Box 2830, Miami, Florida.

APPLICATION TO FILE PETITION
FOR NATURALIZATION

I desire to file a petition for naturalization in the U. S. District Court at San Juan, Puerto Rico.

Richard Isaac Menasche, c/o Columbia Pictures, P. O. Box 422, San Juan, Puerto Rico.

INSTRUCTIONS TO THE APPLICANT

Important: Under the naturalization laws, citizenship may be revoked for concealment of a material fact or for willful misrepresentation in connection with the naturalization proceedings. It is important therefore that you fill out pages 1, 2, 3, and 4 of this form completely and as accurately as possible, using ink or a typewriter. If you do not have enough room to answer a question, continue your answer on another sheet of paper and show the number of the question you are continuing.

Photographs: You must send with this application three identical photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in
33 size, and distance from top of head to point of chin should be approximately 1¼ inches, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. *Do not sign your photographs.*

Date of Your Arrival: If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, give the facts as you remember them.

If the date of your arrival in the United States was on or before June 29, 1906, you should submit with this application documen-

tary evidence of your residence in the United States prior to that date. Such documents may be family Bible entries, deeds of record, wills or other authentic legal documents, life insurance policies, bankbooks and records, employment records or other documents showing that you were in the United States on or before June 29, 1906. Do not submit such documents if your arrival in the United States was after June 29, 1906.

Alien Registration Receipt Card: It is important that you show, inside the boxes appearing at the top of pages 1 and 3 of this form, the exact spelling of your name as it appears on your alien registration receipt card and the number of your card. As the law requires you to carry such card with you at all times, *do not send* your alien registration receipt card with this application.

(1) In what places in the United States have you lived during the last 5 years?

ANSWER TO QUESTION NO. 1

I have been employed in an executive capacity with a wholly owned subsidiary of Columbia Pictures International, an American business corporation, since 1939. On March 7, 1948 I entered the United States under a *visa* for permanent residence. Since then I have been a legal U. S. resident and have been required to occupy managerial positions for the said company as
34 follows: (a) From March 7, 1948 to April 22, 1948 I physically resided in New York City, % Joe Siritsky, #90 Riverside Drive. From April 22, 1948 to March 5, 1949 I was stationed in Brussels, Belgium as Manager for Belgium of the above company. (b) From March 5, 1949 to March 27, 1949 I physically resided in New York City, % the same address mentioned. From March 27, 1949 to March 7, 1950 I continued to occupy the above mentioned position in Brussels, Belgium. (c) From March 7, 1950 to March 19, 1950 I physically resided in New York City, % Columbia Pictures International, #729 - 7th Avenue. From March 19, 1950 to March 5, 1951 I resumed my managerial position with the company in Brussels, Belgium. (d) From March 5, 1951 to March 19, 1951 I physically resided in New York City, % Columbia Pictures International, #729 - 7th Avenue. From March 19, 1951 to February 24, 1952 I occupied the same managerial position with the company in Brussels, Belgium. (e) From February 24, 1952 to March 24, 1952 I stayed at the Hotel Mayflower #15 Central Park West, New York City. (f) From March 24, 1952 to this date I have physically resided in San Juan, Puerto Rico, % Columbia Pictures of Puerto Rico, Inc., Box 422, San Juan. I visited the Dominican Republic in the course of my employment as Manager for the

Puerto Rico, Virgin Islands, Dominican Republic and Haiti area of the said Company, from June 17 to June 21, 1952 and from January 5 to January 7, 1953.

SPECIAL NOTE. Since my legal entry in 1948, I have been a U. S. taxpayer and have paid substantial income taxes to the Federal Government. I filed my Declaration of Intention to become a citizen on April 16, 1948 before William V. Connel, U. S. District Court Clerk for the Southern District of New York, under the No. 586981. My absences from the U. S. have always been for less than one year, properly authorized by a re entry permit, and my absences have always been necessary at the request of and in order to represent a bona-fide American corporation engaged in the development of foreign trade and commerce.

(2) What were the names, addresses, and occupations (or types of business) of your employers during the last 5 years?

ANSWER TO QUESTION NO. 2

During the past 14 years I have been continuously employed in an executive capacity with Columbia Pictures Near East Ltd., from January 1, 1939 to July 1947, located in Cairo, Egypt, and with Columbia Film S. A. B. from July 1947 until February 15, 1952 located in Brussels, Belgium. From February 24, 1952 till March 24, 1952 I worked in the offices of Columbia Pictures International, 729 Seventh Avenue, New York City. Since March 24, 1952 I have been Manager for Columbia Pictures of Puerto Rico Inc., located at San Juan, Puerto Rico. All of the above corporations have at all times been wholly owned subsidiaries of Columbia Pictures International of New York, New York, an American corporation which has at all times been engaged in the promotion of foreign trade and commerce.

(3) How many times have you been married? 1. How many times has your wife been married? 2. If either of you have been married more than once, fill in the following information for each previous marriage.

Date Married: March 10, 1937.
Date Marriage Ended: May 13, 1945.
Name of Person to Whom Married: Avram Friedman.
Person Married Was Alien.
How Marriage Ended: Divorce.

(4) Have you ever been an inmate of an insane asylum or similar institution or have you ever been treated for any mental illness? No.

(5) Have you ever, in the United States or in any other country, been arrested, charged with violation of any law or ordinance,

summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation or parole, or forfeited collateral for any act involving a felony, misdemeanor, or breach of any public law or ordinance? No.

(6) Has a warrant of arrest in deportation ever been issued against you or have you ever been deported or ordered deported or are deportation proceedings pending against you? No.

(7) What organizations in the United States or in any other country have you been a member of during the last 10 years? None.

(8) What organizations in the United States or in any other country have you been a member of during the last 10 years? None.

(9) Do you owe a tax of any kind to the Federal Government? No.

(10) Have you ever filed a Federal Income Tax Return? Yes. If "Yes" give the last year filed: 1952—Partial return before leaving for Puerto Rico.

(11) Have you ever voted or otherwise represented yourself to be a United States citizen? No.

(12) Was your father or mother ever a citizen of the United States? No.

(13) Have you ever been registered and fingerprinted under the Alien Registration Act of 1940 or any other later Act? Yes. If "Yes" write the number of your Alien Registration Receipt Card inside the boxes at the top of pages 1 and 3, and the exact name shown on the card.

(14) If male, did you register under the Selective Service Law of 1917, 1918, 1940, 1948, 1951 or later Draft laws? No. Were you ever exempted from service because of conscientious objections, alienage, other? No. (1).

(15) If you ever served in the Armed Forces of the United States, state branch (Army, Navy, etc.); from , 19 to , 19 ; Service No. ; type of separation (Honorable, Dishonorable, etc.); reason for separation, alienage, conscientious objections, other ?

(16) If the law requires it, are you willing (a) to bear arms on behalf of the United States? Yes, (b) to perform noncombatant services in the Armed Forces of the United States? Yes; (c) to perform work of national importance under civilian direction? Yes.

(17) Have you ever deserted from the military or naval forces of the United States while this country was at war? No. Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? No.

(18) Are you now or have you ever (Answer "Yes" or "No") (a) been a habitual drunkard? No; (b) derived income principally from illegal gambling activities? No; (c) given false testimony to obtain benefits under the immigration or naturalization laws? No; (d) been a polygamist or practiced or advocated polygamy? No; (e) been a prostitute, or engaged in or received support or the proceeds from prostitution, or procured or imported or attempted to procure or import persons for prostitution or any other immoral purpose, or come to the United States to engage in any other unlawful commercialized vice? No; (f) knowingly and for gain encouraged or aided any alien to enter the United States illegally? No; (g) committed a crime involving moral turpitude? No.

38 Alien Registration: Richard Isaac Menasche, No. 6862935.

STATEMENT OF FACTS FOR PREPARATION OF PETITION

(1) My full, true, and correct name is Richard Isaac Menasche.

(2) My present place of residence is 52 Calle Los Banos, San Juan, Puerto Rico.

(3) My occupation is Manager of Columbia Pictures of P. R. Inc.

(4) I am 46 years old.

(5) I was born on September 19, 1906 in Antwerp, Belgium.

(6) My personal description is as follows: Sex, Male; Complexion, Fair; Color of eyes, Brown; Color of hair, Black; Height 5 feet 6 inches; Weight, 175 pounds; visible distinctive marks, none; country of which I am a citizen, subject or national—France.

(7) I am married; the name of my wife is Frieda Menasche; we were married on September 21, 1945 at Cairo, Egypt; she was born at Seret, Rumania on December 28, 1915; entered the United States at New York, N. Y. on March 7, 1950 for permanent residence in the United States and now resides at San Juan (with me), Puerto Rico; and was naturalized on (Month—Day—Year) at (City—Town—State); certificate No. , or became a citizen by (3).

(8) I have no children.

(9) My lawful admission for permanent residence in the United States was at New York, New York, under the name of Richard Isaac Menasche, on March 7, 1948, on the Plane, No. 9827. (4)

(10) Since such lawful admission, I have not been absent from the United States for a period or periods of 6 months or longer except as follows:

39 DEPARTED FROM THE UNITED STATES

Port	Date (Month, day, year)	Vessel or other Means of Conveyance
New York, N. Y.	April 22, 1948	By plane
New York, N. Y.	March 27, 1949	By plane
New York, N. Y.	March 19, 1950	By plane
New York, N. Y.	March 19, 1951	By plane

RETURNED TO THE UNITED STATES

Port	Date (Month, day, year)	Vessel or other Means of Conveyance
New York, N. Y.	March 5, 1949	By plane
New York, N. Y.	March 7, 1950	By plane
New York, N. Y.	March 3, 1951	By plane
New York, N. Y.	Feb. 24, 1952	SS Queen Mary

(11) I have resided continuously in the United States of America since March 7, 1948 and continuously in the State of Puerto Rico where I now live since March 24, 1952 and during the past 5 years I have been physically present in the United States for an aggregate period of 16 months (XX).

(12) I have not heretofore made petition for naturalization.

(13) I wish the naturalization court to change my name to Richard Menasche.

To the Applicant: Do not write between the double lines below:

(1st witness) (S) Capt. Charles J. Rowell, U. S. Army, residing at [illegible] (illegible), P. R.

(2d witness) Frank J. Pravas, Mgr. residing at 112 Rodrigo Triana, Hato Rey

United States 4 24 & 3 24 52. State 11. Physical presence 12 & 13 mos. Examiner [illegible] (illegible)

XX—Memorandum regarding answer to Question No. 11

Petitioner believes that he has complied with all requirements as to residence and is qualified to make this application.

40 It is the contention of your petitioner that although he has only been physically present in the United States approximately 16 months, as stated in the petition, and under Section 316 of the New Immigration and Nationality Act which became effective on December 24, 1952, if applicable, not less than 30 months physical presence is required, your petitioner maintains that under an equitable interpretation of the Savings Clauses of the new Act, § 405 (a), his rights should be determined under

the provisions of law in effect at the time that he qualified for permanent residence.

In the alternative, petitioner contends that the term of residence already earned by him under the provisions of the old law up to the date when the new Act went into effect (approximately 4 years and 9 months) should be credited to him, and that in any event, only the balance of the five year residential requirement still to run should be governed by the physical presence requirements contained in the new law. Inasmuch as petitioner has been physically present in the United States (Puerto Rico) since December 24, 1952, he has fully met that condition.

(14) My father's full name was Leon Menasche.

(15) My mother's maiden name was Eugenie Namer.

(16) My last place of foreign residence was #40 Rue Louis Hymans, Brussels, Belgium.

(17) I emigrated to the United States from the port of London, England.

(18) The person in the United States to whom I was coming was _____. To establish permanent residence.

(19) The place in the United States to which I was going was New York City, N. Y.

(20) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are:

11 (S) RICHARD ISAAC MENASCHE.

Date: March 21, 1953 % Columbia Pictures, P. O. Box 132, San Juan, P. R.

To Applicant: Do not fill in blanks below this line.

NOTE CAREFULLY.—This application must be sworn to before an officer of the Immigration and Naturalization Service at the time you appear before such officer for examination on this application.

AFFIDAVIT

I, Richard Isaac Menasche, do swear (affirm) that I know the contents of this application comprising pages 1 to 4, inclusive, and the supplements thereto, Forms No. _____, subscribed to by me; that the same are true to the best of my knowledge and belief, and that corrections numbered (1) to (11) were made by me or at my request, and that this application was signed by me with my full, true, and correct name.

(S) RICHARD ISAAC MENASCHE.

Subscribed and sworn to before me by the above-named applicant at the preliminary interrogation (examination) at San Juan, P. R. this 24th day of April, 1953. I certify that the

above applicant stated in my presence that he had (heard) read the foregoing application and understands the contents thereof, before verification.

(S) DAVID L. SCOTT,
Actg Nat. Exam.

RECORD FOUND

Verified as alleged.
Date: 3-31-55.

(S) MAGGIE L. BELL.

42 *Exhibit No. II to Exhibit I*

AFFIDAVIT

STATE OF NEW YORK,
CITY OF NEW YORK,
County of New York, ss:

FRANCIS E. ZUCKER, having first been duly sworn deposes and says:

1. This affidavit is being made in connection with the application of Mr. Richard Isaac Menasche for American Citizenship.

2. The deponent is the Treasurer of the Columbia Pictures International Corporation (hereinafter called "International"). Mr. Menasche has been continuously employed since January 1, 1950 by International or by International's parent company, Columbia Pictures Corporation (hereinafter called "Columbia"). International is a Delaware corporation and Columbia is a New York corporation. International is engaged in the distribution throughout the world outside of the United States of motion pictures produced in the United States by Columbia.

3. At all times since Mr. Menasche came to the United States in 1948 for the purpose of becoming an American citizen, he has been employed by International continuously as a senior sales executive with important duties and responsibilities. By direction of International he has performed his duties and rendered his services outside of the United States because we believed that his greatest value to us was in the foreign field. Most recently during this period he has been assigned to the Puerto Rican office in San Juan in charge of said office.

4. At all times since Mr. Menasche came to the United States in 1948 he has emphasized that he would not remain outside of the United States for any period of time which might interfere with or delay his becoming an American citizen. To that end the places and period of time set for the fulfillment of his services outside of the United States and the times when he might return to this country for the purpose of renewing his residence, in connection with his application for citizenship, were always fixed to meet the requirements of his residence in the

United States as understood by Mr. Menasche and communicated by him to us.

5. By reason of and in the course of said employment, deponent has had the opportunity to form and has formed an opinion of Mr. Menasche's character and ability. In the opinion of deponent Mr. Menasche's character is excellent and his ability of high quality; we have found him honest, efficient, and intelligent. He has performed his services in a meritorious manner and we consider him a valuable sales executive, especially in the foreign field. We also believe that he will make a good, desirable and loyal American citizen and we hope for him that his application will be granted as soon as possible.

Sworn to before me this 19th day of March, 1953.

(S) Arthur Peckoff.
ARTHUR PECKOFF.
Notary Public, State of New York.

[SEAL]

No. 03-8312400. Qualified in Bronx County. Certificates filed with New York and Bronx County Clerks and Register's Offices. Commission Expires March 30, 1954.

(S) B. E. Zeeman,
BERNARD E. ZEEMAN.

44 *Exhibit No. III to Exhibit I*

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

P. O. Box 1986

San Juan 9, Puerto Rico

File No. A-6 862 935
(2849-P-5308)

PRELIMINARY EXAMINATION ON PETITION FOR NATURALIZATION

Date: April 24, 1953.
Place: San Juan, Puerto Rico.
Petitioner: Richard Isaac Menasche.
Designated Examiner: David L. Scoles.
Stenographer: Manuela S. de Mendez.
Witnesses: Charles J. Powell and Frank J. Planas.

Examiner to Petitioner:

Q. Are you able to speak and understand the English language?—A. Yes.

Examiner to Witnesses:

Q. And do you speak and understand the English language?—A. Yes.

Examiner to Petitioner and Witnesses:

Q. You are informed that this is a preliminary examination on the petition for naturalization of Richard Isaac Menasche as a citizen of the United States. I am presiding at this examination as a naturalization examiner designated under the Immigration and Nationality Act of 1952. As such I am authorized by law to take testimony concerning any matter touching on or affecting in any way the the admissibility of any petitioner for naturalization. Do you understand?—A. Yes.

Q. Will the three of you please stand and be sworn. (Petitioner and witnesses comply.) Do you solemnly swear that the statements you are about to make at this time will be the truth, the whole truth and nothing but the truth, so help you God?—A. Yes.

Q. I will now read to you the contents of this petition. (Petition read to petitioner and witnesses by examiner) You have heard the petition read. Are all the statements contained therein true to the best of your knowledge and belief?—A. Yes.

Examiner to Witnesses:

Q. The two witnesses, both American citizens, recommend the petitioner Richard Isaac Menasche for American citizenship?—A. Yes.

Q. Neither of you know any reason why he should not be an American citizen?—A. No.

Q. I am about to conduct a further examination as to the question of Mr. Menasche's physical presence in the United States. You may remain if you wish, or you may leave.—A. We will go now.

Examiner. Witnesses are excused.

Examiner to Petitioner:

Q. You are advised that I am about to discuss the question of your physical presence in the United States and other matters relating to your petition. You have the right to be represented by counsel of your own choice and at your own expense. Such counsel may be an attorney at law or other person qualified to practice before the Immigration and Naturalization Service. Do you desire so to be represented?—A. I think I will do it myself. Do I have the right to have a lawyer at y time I want?

Q. You may request the right of having a lawyer at any time and the hearing will be stopped to permit you to get an attorney. Do you understand?—A. Yes.

Q. You are advised that you have the right to offer evidence to meet any evidence presented or adduced by the government and to cross-examine witnesses if there be any. As Designated Examiner, I shall rule on all objections to the introduction of evidence but any evidence ruled inadmissible shall

nevertheless be received into the record, subject to the ruling of the court. Is that understood?—A. Yes.

Q. If you wilfully and knowingly tell a lie in this proceeding as to anything which is important to the decision to be made, you may be prosecuted for perjury, the penalty for which is imprisonment of not more than five years or a fine of not more than $2,000 or both such fine and imprisonment. Do you understand?—A. Yes.

Q. The purpose of this part of the hearing is to give you an opportunity to present any evidence or argument which you may wish concerning the question of physical presence in the United States. According to your sworn statements on the petition you entered the United States March 7, 1948. Since that time you have been absent from March 22, 1948 to March 5, 1949; from March 27, 1949 to March 7, 1950, from March 19, 1950 to March 5, 1951 and from March 19, 1951 to March 24, 1952. These were all absences of more than six months .—A. That's right, but less than a year, which were the regulations at the time.

Q. I also find that since your entry February 24, 1952, you have again been absent. I have a record of your departure June 17, 1952 at San Juan, Puerto Rico and your return June 21, 1952. Is that a correct statement of your absence?—A. It is, I went to Santo Domingo and Haiti.

Q. I also have a record of your return to the United States January 7, 1953 .—A. I went to Santo Domingo for two days.

47 Q. Then you have been, in addition, absent from the United States six days beyond the amount shown on the petition?—A. Yes, six days.

Q. Then, according to the record, you have been absent from the United States during the last five years a total of between forty-four and forty-five months. Is that correct?—A. Yes.

Q. And then you have been physically present in the United States between fifteen and sixteen months of the past sixty months. Is that correct?—A. Up to this date it is sixteen months.

Q. I wish to read to you a portion of the Immigration and Nationality Act of 1952. Section 316 (a) of the Immigration and Nationality Act of 1952 reads as follows:

> SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half

of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

That is the reading of Section 316 (a) of the Immigration
48 and Nationality Act of 1952. Do you have any evidence or argument to present as to any reason why your petition should not be denied on the ground that you have not been physically present in the United States for at least one half of the last five years?—A. Yes, I have, sir.

Q. You may proceed.—A. I wish to enter as an exhibit in this record an affidavit of March 19, 1953, by Mr. Bernard E. Zeeman, Treasurer of Columbia Pictures International.

Q. It will be entered as Exhibit H and may I state for the record that there will be entered also, as Exhibit I, your application containing your statements in applying for permission to file a petition and carrying four supplementary answers. This will be marked Exhibit I. You may proceed.—A. I wanted to come to the United States in November, 1947, and I had my reservation made at that time. If I had come at that time I would be finding myself today able to file in November last and not affected by any new act. I would come under the previous law. However, Columbia Pictures cancelled my reservation because they needed my activities in Belgium at the time and asked me to secure an extension, which I did. I obtained an extension of six months. The American Consul in Antwerp gave me a new immigration visa which shown on my passport which I actually have and when the six months expired Columbia Pictures cabled me that due to world wide conditions, in spite of the fact that I was paying for my trip to the States—at my own expense—that they could not approve my trip to come to the States in order to establish residence and take out first papers. To that effect I told them I was very sorry and in spite of the very important position that I had in the company I resigned. When I gave them my resignation I got a cable from them which I show you now, Mr. Scoles, dated the
49 27th of February reading "Trip approved provided all expenses your account."

(Note by Examiner: Cable read and returned to petitioner.)

Q. Mr. Menasche, your answer to question 11 of the application to file a petition, such application being Exhibit I of this hearing,

states that you rely on Section 405 (a) of the new Act, the savings clause.—A. Yes, that is what my attorney put in.

Q. Section 405 (a) of the Immigration and Nationality Act of 1952, which became effective December 24, 1952, reads as follows:

> SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal; done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect.

Is it your contention, then, that in so far as your petition is concerned, the Nationality Act of 1940 continues in force and effect?—A. Yes. It is my contention that when my company finally approved my trip to the States I came over at my expense, took out my first papers and was constantly guided during the four year period according to the laws in effect at that time. I knew I could be absent each year less than a year working for an American company abroad inasmuch as I had my papers and I paid income tax as a resident in the United States, which was a heavy burden on me because I was paid in Belgium and I paid income tax in the States on my earnings in Belgium—I was paying double taxation. But my desire to become a citizen of the United States was so strong that nothing could stop me. That is one of the reasons why the company has backed me up and gone through all the trouble of transferring me from Belgium to Puerto Rico to get the required residence to meet the requirements of the law then in effect. Now I am a little upset that I still cannot have definite assurance in regard to my status.

Q. Your application to file a petition for naturalization Exhibit 1 of this hearing, shows that it was received by our Service at Miami, Florida, March 26, 1953. Is that correct?—A. That is correct, sir.

Q. You have also advanced an alternative in your answer to question 11 of Exhibit 1, that of your contention that Section 405 (a) of the Immigration and Nationality Act does not apply, the

term of residence already earned by you under the provisions of the old law to the date when the new Act went into effect, or approximately four years and nine months, should be credited to you, and that, in any event, only the balance of the five year residential requirement still to run should be governed by the physical presence requirement contained in the new law. Your statement is
51 that since you have been physically present in the United States (Puerto Rico) since December 24, 1952, you have fully met that condition. Is that your present contention?—A. Yes.

Q. Have you anything else to offer?—A. No, the only thing I can say is that I believe that a man that has met all the requirements of a previous law, that has first papers and was guided according to a previous law and guided his life accordingly, and has four years and ten months today of residence acquired under the previous law, I think up to the investigator to find out whether two months have to affect me and have to delay my case. It is not up to me to judge that but I think, if I may say so, if the authorities find out that my background is good, that I am no Communist, and that I am an honorable man I am certainly entitled to United States citizenship, after all the good will I have shown, the tremendous financial expenses on all of these trips, and I think that a man who has not a stateless status, because I have a French passport, I only think it can prove that my feelings are entirely in favor of the United States. More than that I cannot prove. I leave it to the judge to prove whether I am entitled to it or not.

Q. It should also be noted for the record that Exhibit H, which was entered as an exhibit of the record earlier in this examination, is a statement by an officer of Columbia Pictures International that the petitioner has been continuously employed by that corporation or its parent company, both American companies, since 1939 and that his absences since 1948 have been at the direction of that company. Exhibit H also states that the petitioner since coming to the United States in 1948 has manifested that he would not remain outside of the United States for any period of time which might interfere with or delay his becoming a citizen of the United States. Exhibit H also contains a high recommendation as
52 to the petitioner's character and ability. Do you have anything further to enter in the record or to state for the record?—A. No, the only thing that I want to say is that I hope that you can get a prompt decision on this because the main reason why my company wanted to send me to Puerto Rico was just to fulfill the required residence for the purposes of citizenship, and due to the fact that I have been twenty four years in this industry they want to use me for more important responsibilities than the

ones I am assuming over here. I feel a little bit embarrassed because I do not want to be a burden to the company, remaining here in Puerto Rico because I am sure they can find a young man who can do the job here just as well. I believe that is also their feeling and I can serve them in a bigger field.

Q. Mr. Menasche, before a final hearing can be had on your petition it will be necessary to secure the depositions of two witnesses as to your qualifications while a resident of New York, N. Y., from April 1, 1948 until March 24, 1952. When those depositions have been secured final decision will be reached in your case as to the recommendation to be made by this Service and you will be furnished with a copy of the Findings of fact, conclusions of law and the recommendation which this Service proposes to make to the court.—A. May I raise a question? I can secure that information from Columbia International. I was wondering whether you would not consider that the affidavit of Mr. Zeeman was sufficient considering that it is the Treasurer talking in the name of the company.

Q. The Immigration and Nationality Act specifically requires that testimony be taken in a certain form by an officer of this Service from two American citizens. Your case will be sent to New York airmail with a request that those depositions be taken.

53 You are informed that you may have ten days from this date to submit arguments in writing or a brief to accompany this record. Do you desire to submit any brief or argument?—A. No, I have nothing more to add.

The examination is closed, thank you.

I certify that the foregoing, consisting of seven pages, is a full and correct transcript of my shorthand notes at this statement.

(S) Manuela S. de Mendez,
MANUELA S. DE MENDEZ,
Clerk-Stenographer.

Attest:

(S) David L. Scoles,
DAVID L. SCOLES,
Designated Examiner.

In United States District Court

Petitioner's Exhibit A

(Filed Aug. 17, 1953)

No. 586981

UNITED STATES OF AMERICA

DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof)

STATE OF NEW YORK,

Southern District of New York, ss:

In the District Court of United States at New York, N. Y.

(1) My full, true, and correct name is Richard Isaac Menasche.

(2) My present place of residence is 769 Seventh Ave., New York, N. Y.

(3) My occupation is supervisor of pictures.

(4) I am 41 years old.

54 (5) I was born on Sept. 19, 1906 in Antwerp, Belgium.

(6) My personal description is as follows: Sex, male; color, white; complexion, fair; color of eyes, dk. brn.; color of hair, black; height, 5 feet 7 inches; weight, 150 pounds; visible distinctive marks, none; race, white; present nationality, France.

(7) I am married; the name of my wife is Frieda; we were married on 9/21/46 at Cairo, Egypt; she was born at Geret, Rumania on Dec. 28, 1915; and entered the United States at: never; and now resides at Belgium.

(8) I have no children.

(9) My last place of foreign residence was Brussels, Belgium.

(10) I emigrated to the United States from London, England.

(11) My lawful entry for permanent residence in the United States was at New York, N. Y. under the name of Richard Isaac Menasche on Mar. 7, 1948; on the Plane NC 90927.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer.

(13) I have not heretofore made declaration of intention.

(14) It is my intention in good faith to become a citizen of the United States and to reside permanently therein.

(15) I will before being admitted to citizenship, renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at the time of admission to citizenship I may be a subject or citizen.

(16) I am not an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage;

55 nor a disbeliever in or opposed to organized government;

nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(17) I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me and was signed by me.

I do swear (affirm) that the statements I have made and the intentions I have expressed in this declaration of intention subscribed by me are true to the best of my knowledge and belief: So help me God.

(S) RICHARD ISAAC MENASCHE.

Subscribed and sworn to (affirmed) before me in the form of oath shown above in the office of the Clerk of said Court, at New York, N. Y. this 16th day of April, anno Domini 1948 I hereby certify that Certification No. 6309 k-105197 from the Commissioner of Immigration and Naturalization, showing the lawful entry for permanent residence of the declarant above named on the date stated in this declaration of intention, has been received by me, and that the photograph affixed to the duplicate and triplicate hereof is a likeness of the declarant.

WILLIAM V. CONNELL,
Clerk of the U. S. District Court.

[SEAL] By (S) WILLIAM MATTSON,
Deputy Clerk.

(Photograph)

Form N-315

U. S. Department of Justice

Immigration and Naturalization Service

(Edition of 11-1-41)

56 In United States District Court

Opinion

(Filed September 24, 1953)

The petition for Naturalization of Richard Isaac Menasche, petitioner herein, came up for final hearing under Sections 336 (a), Chapter 2, Title III of the Nationality Act of 1952 (Title 8 USCA Sec. 1447 (a)), on August 17, 1953 at 9:30 o'clock in the morning. Documentary and oral evidence was adduced at said hearing and the case submitted to the Court on written memoranda filed by the parties, which have been the subject of due consideration by the Court.

The only question at issue is whether petitioner is bound to comply with the physical presence requirement of Section 316 (a) of the Nationality Act of 1952 (Title 8 USCA Sec. 1427 (a)).

The government concedes that if petitioner had filed his petition under the Nationality Act of 1940, he would have met the residence requirement for naturalization contained in Section 307 (a) of said Act (Title 8 USCA Sec. 707 (a)) and that, were it not for the physical presence requirement of Section 316 (a) of the Nationality Act of 1952 (Title 8 USCA Sec. 1427 (a)), he would be eligible to citizenship because of his meeting of all other requirements therefor under both acts.

Petitioner concedes that if he is compelled to meet said physical presence requirement of the Nationality Act of 1952, he would not be yet eligible to citizenship, but claims that such requirement is inapplicable to him because the validity of his Declaration of Intention made on April 16th 1948 under the Nationality Act of 1940 and the proceeding initiated thereby, as well as the status, condition and right in process of acquisition derived therefrom and done or existing at the time the Nationality Act of 1952 took effect,

must be deemed to have continued in full force and unaf-
57 fected by the adoption of the latter act, and that his naturalization must be, therefore, governed by the provisions of the Nationality Act of 1940, which pursuant to the Saving Clause, Section 405 (a) of the 1952 Act (Title 8 USCA Sec. 1101, footnote at p. 204), was in that respect expressly left in full force and effect.

Thus, the problem is reduced to determining whether under the provisions of the aforesaid saving clause petitioner is or is not bound to comply with the physical presence requirement of the Nationality Act of 1952.

The legislative history of the Nationality Act of 1952 sheds no light for the solution of this problem.

The analogy of some judicial precedents invoked by petitioner affords, however, convincing reasons towards a just and equitable solution thereof.

In Petition of Sproule, 19 Fed. Supp. 995, the court characterized "the declaration of intention" as "the first step in the process of naturalization", further stating that the "declarant" thereof "acquires an *inchoate nationality*" even though "he remains an alien until the naturalization is *completed*," and acknowledging that certain *rights* flow from a declaration of intention, subject, however, to a strict construction. [Emphasis supplied.]

See also Terrace v. Thompson, 263 U. S. 197, holding that, for certain purposes, the status of a declarant under a Declaration of Intention is sufficiently different from that of a non-declarant.

Although it is true that a Declaration of Intention is no longer necessary in the process of naturalization under the Nationality Act of 1952, it was, however, the initial step in said process under

the Nationality Act of 1940 which was the only naturalization statute in force when petitioner took his first papers.

The Nationality Act of 1940 contained a saving clause, Section 347 (a), (Title 8 USCA Sec. 747 (a)) which was
58 not as broad as the saving clause contained in the Nationality Act of 1952, Sec. 405 (a), (Title 8 USCA Sec. 1101, footnote at p. 204).

The terms "status," "condition," "right in the process of acquisition," "liability," "obligation," "rights" did not appear in the former, while they were specifically added to the latter.

Construing the saving clause of the Nationality Act of 1940, the Court of Appeals for the Second Circuit held that the provisions thereof did not cover "a mere *condition*, unattended by any affirmative action by the alien or by anyone else." [Emphasis supplied.]

United States ex rel Aberasturi v. Cain, 147 F. 2d 449, 452.

The term "condition" was one of the terms not appearing in the saving clause of the Nationality Act of 1940, there construed, but which was later specifically included in the saving clause of the Nationality Act of 1952.

No doubt Judge Clark's dissenting opinion in the above case had much to do with the inclusion of said term in the latter act to avoid the narrow interpretation given to the saving clause of the former act in the majority opinion in said case.

Four years later, the Court of Appeals for the District of Columbia was called upon to construe the same saving clause of the 1940 Act, and in failing to agree with the holding of the Court of Appeals for the Second Circuit in United States ex rel Aberasturi v. Cain, supra, it held that, although not specifically included in its language, said "saving clause must have referred to *rights in the process of acquisition.*" [Emphasis supplied.]

Bertoldi v. McGrath, 178 F. 2d 977, 979.

It is again significant that the phrase "right in the proc-
59 ess of acquisition" which did not appear in the saving clause of the 1940 act was later specifically included in the saving clause of the 1952 Act.

No doubt Congress, in adding said phrase to the saving clause of the Nationality Act of 1952, gave considerable weight to the above decision, and had this, as well as Judge Clark's dissenting opinion in the United States ex rel Aberasturi v. Cain case, supra, in mind, for including in the language of said clause the other terms to which reference has been made hereinabove and which do not appear in the saving clause of the 1940 Act.

The record in this case shows, and the government does not deny, that the petitioner falls under several of the situations contemplated in the saving clause of the 1952 Act, which, as above stated is much broader than that of the 1940 Act. For instance:

(a) He took out his first papers, i. e., signed and had issued to him his Declaration of Intention on April 16, 1948 and relied and rested on it to comply with the further requirements of the Nationality Act of 1940, then in full force and effect, and which, under the holding of the Court in Petition of Sproule, *supra*, was the first step in the process (proceedings) for naturalization, acquiring thereby an inchoate nationality and certain rights flowing therefrom. It cannot be denied that said Declaration of Intention and the proceeding initiated thereby were valid at the time the Nationality Act of 1952 went into effect and, were it not for the enactment of this Act, would have ripened into naturalization upon petitioner's compliance with all the other requirements of the 1940 Act (which is conceded) and upon his subsequent filing of the petition for naturalization barely four months after the effective date of the 1952 Act.

60 (b) The proceedings for his naturalization had been long initiated and brought when the 1952 Act went into effect.

(c) He enjoyed at the time a status, condition and right in the process of acquisition, the existence of which cannot be denied.

The saving clause of the 1952 Act directs that nothing contained in said Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any such declaration of intention, or proceeding; or to affect any proceedings brought, or any status, condition, right in process of acquisition, act, thing or matter such as those done, existing and enjoyed by petitioner, as heretofore discussed, at the time said act went into effect, and further provides that, as to all such proceedings, statutes (sic), conditions, rights, acts, things or matters, the statutes or parts of statutes repealed by said Act, are, unless otherwise specifically provided therein, thereby continued in force.

As regards the present controversy, the government concedes that there is nothing in said act specifically providing otherwise.

If, as the court said in Bertoldi v. McGrath, supra, the words of the saving clause in the 1940 Act, "were about as broad as language could be" in the matter of protecting the rights of the plaintiff therein, it can certainly be said here, with stronger force, that the same words plus such others as "status," "condition," "right in the process of acquisition" now contained in the saving clause of the 1952 Act, and which did not figure in the saving clause there construed, are actually as broad as language could be in the sense of affording protection to the petitioner herein.

Paraphrasing the opinion in said case, it can be more aptly stated here that said words "evince a clear intent on the part

61 of Congress that the new act should take effect prospectively." I still more strongly think that the 1952 Act means "that rights partly accrued under the old act should not be disturbed by the new one. The opposite view would be, to take an extreme illustration, that if "an alien had lawfully entered this country and had filed his declaration of intention 4 years and 364 days prior to the effective date of the Nationality Act of 1952 and complied prior thereto with all the requirements of the pre-existing act," his slowly ripening citizenship would have been struck down."

I share the opinion "that Congress intended, by the saving clause, to prevent that sort of result."

The ruling in Bertoldi v. McGrath, supra, was subsequently accepted by the government. (Cf Acheson v. Albert, 195 F. 2d 573, 575).

So far said ruling has not been reversed, modified or in any way changed or altered by the Supreme Court.

If the petitioner herein is not entitled to the protection of the saving clause in the 1952 Act in the sense hereinabove discussed, the said saving clause would afford no protection at all to anybody. Obviously, its construction cannot be limited as relating to rights which had been completely acquired at the time the act came into effect, as would be the case of a petition for naturalization meeting all the requirements of the 1940 Act and filed before the 1952 Act became effective, to which the government makes reference in its brief in connection with paragraph (b) of Sec. 405 of the 1952 Act (Title 8 USCA Sec. 1801, footnote at p. 204), since said 1952 Act in no wise purported to destroy retroactively citizenship fully acquired. So it must exclusively be meant to deal with status, conditions, and rights in the process of acquisition such as those enjoyed by petitioner herein.

To hold otherwise would be to attribute to Congress the
62 adoption of a meaningless provision of law, which in this Court's opinion is inconceivable.

The petition must be, therefore, granted and petitioner should be admitted to citizenship.

San Juan, Puerto Rico, September 24, 1953.

(S) CLEMENTE RUIZ NAZARIO,
United States District Judge

In United States District Court

Findings of fact and conclusions of law

(Filed September 24, 1953)

The petition filed in this case came on for hearing on August 17, 1953, and the Court, having considered the report filed herein on behalf of the Immigration and Naturalization Service of the Department of Justice of the United States by the designated Naturalization Examiner, Mr. David L. Scobie, which contains the "Findings of Fact, Conclusions of Law and Recommendation of the Designated Naturalization Examiner," as well as the evidence adduced at the hearing of the above-mentioned petition, and the whole record thereof and briefs of counsel, being duly advised in the premises and on the basis of the Opinion rendered herein on this date, now makes and adopts the following Findings of Fact and Conclusions of Law:

Findings of fact

1. The petitioner was lawfully admitted into the United States for permanent residence on March 7, 1948.

2. Pursuant to law, petitioner signed and filed in his behalf a Declaration of Intention under the Nationality Act of 1940, on April 16, 1948.

3. In reliance upon the law as it then prevailed, petitioner
63 was absent from the United States for more than 6 months but less than one year, from and after the date of his legal entry, as follows:

April 22, 1948 to March 5, 1949
March 27, 1949 to March 7, 1950
March 19, 1950 to March 5, 1951
March 19, 1951 to February 21, 1952

and for less than six months from:

June 17, 1952 to June 21, 1952
January 5, 1953 to January 7, 1953

4. Petitioner, since 1939, has been continuously employed by Columbia Pictures International, an American business corporation, and his absences abroad were occasioned or necessary in connection with his employment by that corporation which was at all times engaged in the promotion of foreign trade and commerce of the United States.

5. Petitioner filed a petition for naturalization on April 24, 1953, at or about and prior to the time of his departure for France.

6. Within the 5 year period immediately preceding the date of the filing of his petition, petitioner was physically present in the

United States for a total of 16 months and absent from the United States under the circumstances hereinabove described, for a total of 44 months.

7. Petitioner did not in fact abandon his residence in the United States during such periods of absence.

8. According to the statement made by the representative of the Immigration and Naturalization Service at the hearing on this petition, and as conceded in the government's brief, petitioner has complied with all other requirements of the Immigration and Nationality Act, except that contained in Section 316 (a) of the 1952 Act (Title 8 USCA Sec. 1427 (a)), which requires that a petitioner for naturalization be physically present within the United States for a period of not less than 2½ years.

64 9. By virtue of the facts hereinabove found, and pursuant to the provisions of the Saving Clause in the Immigration and Nationality Act of 1952, Section 405 (a) of the said Act (8 USCA 1101, 1952 Cumulative Annual Pocket Part, footnote pp. 204–205), and of what Congress must be deemed to have intended thereby, the Court further finds that when the said Act went into effect on December 24, 1952 petitioner was holding a valid Declaration of Intention, was enjoying a status and condition and was in the process of acquiring a right, as such terms are used in the aforesaid Saving Clause.

Conclusions of Law

1. Petitioner has met with all other requirements contained in the Immigration and Nationality Act of June 27, 1952 (Title 8 USCA, Chapter 12), except that he has not been physically present within the United States for the 2½ year period required under said Act.

2. Unless the physical presence requirement contained in the above Act is to be applied to the petitioner in this case, petitioner is entitled to become a citizen of the United States under the petition which he has filed herein.

3. By virtue of the facts hereinabove found, and pursuant to the provisions of the Saving Clause in the Immigration and Nationality Act of 1952, Section 405 (a) of the said Act (Title 8 USCA 1101, 1952 Cumulative Annual Pocket Part, footnote pp. 204–205), and of what Congress must be deemed to have intended thereby, the Court concludes that when the said Act went into effect, on December 24, 1952, petitioner was holding a valid Declaration of Intention, had initiated valid proceedings for his naturalization under the Nationality Act of 1940, and was enjoying a

status, condition and right in the process of acquisition,
65 as such terms are used in the Saving Clause hereinabove
referred to, the validity of which were not affected by the enactment of the Nationality Act of 1952, and as to which the provisions of the Nationality Act of 1940 remained in full force and effect, and he does not have to meet the physical presence requirement of Section 316 (a) of the Nationality Act of 1952 (Title 8, USCA Sec. 1427 (a)) to be entitled to become a United States citizen.

4. Petitioner is entitled to be admitted to citizenship under the terms of both the Nationality Act of 1940 in effect up to December 24, 1952 and the Nationality Act of 1952, approved June 27, 1952 in the light of the construction which the Court has given to Section 405 (a) of the latter Act.

5. The petition for naturalization herein filed should be granted. Judgment will be entered accordingly.

San Juan, Puerto Rico, this 24th day of September 1953.

(S) CLEMENTE RUIZ NAZARIO.
United States District Judge.

In United States District Court

Judgment

(Filed September 24, 1953)

The above entitled petition for naturalization of Richard Isaac Menasche came on for final hearing before the Court on August 17, 1953 at 9:30 o'clock in the morning, the petitioner appearing in person and by his attorney Tomas I. Nido, Esq., of Fiddler, Gonzales & Nido, and the government appearing by attorney Eugene E. Cole, Esq., Chief of the Nationality & Status Section of the Immigration and Naturalization Service of the United States Department of Justice for the Sixth District, and testimony and documentary proof having been offered and briefs filed by
66 both parties, and the Court having filed its Findings of Fact, Conclusions of Law and Order for Judgment, and its Opinion herein, now, pursuant to said order for Judgment, it is hereby

Ordered and adjudged that the petition for naturalization of petitioner Richard Isaac Menasche be, as it is hereby granted.

San Juan, Puerto Rico, this 24th day of September, 1953.

CLEMENTE RUIZ NAZARIO.
United States District Judge.

In United States District Court

Notice of appeal

(Filed October 30, 1953)

Notice is hereby given that the United States of America, through the Immigration and Naturalization Service of the United States Department of Justice, for the Sixth District, hereby appeals to the Circuit Court of Appeals for the First Circuit from the judgment entered on the 24th day of September, 1953 in the above entitled matter, granting the petition for naturalization of petitioner Richard Isaac Menasche.

San Juan, Puerto Rico, October 30, 1953.

PASCUAL AMADO RIVERA,
United States Attorney.

By (S) R. Rodriguez Antongiorgi,
R. RODRIGUEZ ANTONGIORGI,
Assistant United States Attorney.

[Clerk's certificate to foregoing transcript omitted in printing.]

PROCEEDINGS IN COURT OF APPEALS

On February 4, 1954, this cause came on to be heard and was fully heard by the Court, Honorable Calvert Magruder, Chief Judge, and Honorable Albert B. Maris (by special assignment) and Honorable Peter Woodbury, Circuit Judges, sitting.

Thereafter, to wit, on March 3, 1954, the following opinion of the Court and concurring opinion were filed:

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 4798

UNITED STATES OF AMERICA, APPELLANT

v.

RICHARD ISAAC MENASCHE, APPELLEE

Appeal from the United States District Court for the District of Puerto Rico

[115 F. Supp. 434]

Before MAGRUDER, *Chief Judge*, and MARIS and WOODBURY, *Circuit Judges*

Douglas P. Lillis, Acting District Counsel, Miami District, Immigration and Naturalization Service, with whom Ruben Rodriguez Antongiorgi, United States Attorney, District of Puerto Rico, was on brief, for appellant.

Thomas I. Nido, with whom Fiddler, Gonzalez & Nido was on brief, for appellee.

OPINION OF THE COURT—March 3, 1954

WOODBURY, *Circuit Judge*:

The petitioner-appellee, a native of Belgium and citizen of France, lawfully entered the United States for permanent residence on March 7, 1948, and on April 16 of the same year he filed his Declaration of Intention to become a citizen of the United States. His employment in an executive capacity by a wholly owned subsidiary of Columbia Pictures International, an American corporation, necessitated his absence from the United States for periods of more than six months, but never for more than a year at a time, on several occasions during the following five years. On April 24, 1953, he filed his Petition for Naturalization in the court below.

The Naturalization Examiner designated to conduct the petitioner's preliminary examination found, and the United States does not deny, that in spite of the petitioner's absences he did not in fact abandon or otherwise forfeit his "residence" in the United States. On the other hand, the petitioner concedes, as he must, that his absences were of such frequency and duration that he was not physically present in the United States for at least one half of the five-year period immediately preceding the filing of his Petition for Naturalization. This, the Government contends, prevents the petitioner's naturalization under § 316(a)[1] of the Immigration and Nationality Act (66 Stat. 242) which was passed over presidential veto on June 27, 1952, and went into effect 180 days thereafter on December 24th. The petitioner, however, contends (the court below agreed and admitted the petitioner to citizenship) that his lack of physical presence in the United States is of no consequence for the reason that he is entitled to be naturalized under § 307(a)[2] of the Nationality Act of 1940 (54 Stat. 1142) which contains no requirement of physical presence in the United States prior to a petition for naturalization.

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[1] No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years *and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time*, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. [Italics supplied.]

[2] No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

The answer to these conflicting contentions lies in the meaning of subsections (a) and (b) of § 405 of the Immigration and Nationality Act of June 27, 1952, which in material part read:

> "(a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, [sic (statuses?)] conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect.
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> * * *
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> "(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed."

Certainly if Menasche could have filed a petition for naturalization prior to the effective date of the 1952 Act he would have been entitled under the specific provisions of subsection (b) above to have had that petition heard and determined in accordance with the Nationality Act of 1940. *United States* v. *Cunha*, decided by this court January 8, 1954. And from the particularity of that provision the converse would seem to follow, that is, that all petitions for naturalization filed after the effective date of the Immigration and Nationality Act should be heard and determined in accordance with the provisions of that Act and not in accordance with the requirements of the statute which preceded it. Subsection (a) of § 405, however, is broad and sweeping in its terms. Indeed it is so comprehensive that subsection (b) seems redundant. See *Shambera* v. *United States*, decided by the Court of Appeals for the Second Circuit January 25, 1954. But however that may be, subsection (a) provides categorically that "Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, . . . or to affect . . . any status, condition, *right in process of acquisition* [italics ours] . . . existing, at the time this Act shall take effect;

but as to all such . . . rights . . . the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect."

We need give no weight to the continuing validity of Menasche's declaration of intention, for in the 1952 Act Congress eliminated the requirement of a declaration of intention as a condition precedent to naturalization. Nor do we pause to inquire whether Menasche acquired a "status" of some kind, or performed or acquired some sort of a "condition," when he filed his declaration of intention in April 1948. The reason for this is that from that time on he was in the process of acquiring a "right" for he was complying with then existing statutory requirements for naturalization, and in *Tutun v. United States*, 270 U.S. 568, 578 (1926) Mr. Justice Brandeis, speaking for a unanimous court, said, citing *United States v. Ginsberg*, 243 U.S. 472, 475 (1917) and *Luria v. United States*, 231 U.S. 9, 22 (1913), that although the opportunity to become a United States citizen by naturalization was not a right but merely a privilege, nevertheless the opportunity for citizenship having been conferred by statute, a right to receive a certificate of naturalization arises once all the statutory requirements have been met and the requisite facts are established. Thus, although Menasche acquired no right to naturalization in 1948 when he filed his declaration of intention, he did then start to comply with the statutory requirements necessary at that time for the acquisition of that "right." Hence we think it clear that he was in the process of acquiring a "right" from April 16, 1948 on through December 24, 1952, when the Immigration and Nationality Act became effective. It follows that his situation falls squarely within the provisions of § 405(a) quoted above.

The Government argues that this construction of the section should be avoided because it would leave the law as to the naturalization of aliens unsettled for many years to come. This may be so, but the argument should be addressed to Congress. The words of the statute lead clearly to the result we have reached.

The judgment of the District Court admitting the appellee to citizenship is affirmed.

MAGRUDER, *Chief Judge*, (concurring):

I concur in the opinion of the Court. It is not apparent to me how our interpretation of the statute will result in "unsettling" the law relating to naturalization for many years. The only result will be — and this is quite a different thing — that the provisions of the 1940 Act will continue to govern a greater number of cases than the government would like, and that provisions of the 1952 Act will not be fully applicable for a greater period than the government would like. For all we know, the Congress in so providing may have had in mind the equities of a situation like the present, where, at the

date the 1952 Act went into effect, the petitioner had arrived almost at the threshold of American citizenship, following faithfully the procedures for acquiring a right to naturalization under the 1940 Act. We are naturally loath to accept the government's contention that the Congress intended to slam the door in the face of such an applicant for citizenship and to make him start all over again.

PROCEEDINGS IN COURT OF APPEALS

On the same day, March 3, 1954, the following judgment was entered:

JUDGMENT—March 3, 1954

This cause came on to be heard on the record on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court admitting the appellee to citizenship is affirmed.

By the Court:
(S.) ROGER A. STINCHFIELD,
Clerk.

Thereafter, to wit, on April 3, 1954, mandate issued to the District Court.

CLERK'S CERTIFICATE

I, Dana H. Gallup, Chief Deputy Clerk of the United States Court of Appeals for the First Circuit, and during the temporary absence of the Clerk, in charge of the affairs of said Clerk's office and custodian of its files and papers, certify that the foregoing pages, numbered 1 to 75 inclusive, contain and are a true copy of the record appendix and proceedings to and including April 22, 1954, in the case in said Court numbered and entitled, No. 4798, United States of America, appellant, versus Richard Isaac Menasche, petitioner, appellee.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Court of Appeals for the First Circuit, at Boston, Massachusetts, in said First Circuit, this twenty-third day of April, A.D. 1954.

[SEAL.]

(S.) DANA H. GALLUP,
Chief Deputy Clerk.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954

73-75 Supreme Court of the United States

No. 104, October Term, 1954

UNITED STATES OF AMERICA, PETITIONER

vs.

RICHARD ISAAC MENASCHE

Order allowing certiorari

(Filed October 14, 1954)

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.